IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18490 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRASINH MULSINH THAKORE - Petitioner
Versus
DISTRICT DEVELOPMENT OFFICER & 4 - Respondents

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Appearance :
MR NV GANDHI for Petitioner
MR MANISH J PATEL for Respondent(s) : 1 - 3.
MS TANUJA N.KACHCHHI, AGP for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 12/01/2007

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. By filing the instant petition under Article 226 of the Constitution, the petitioner has prayed to issue a Writ of Mandamus or any other appropriate Writ or order directing the respondents to pay the amount of compensation for acquiring his land admeasuring 5616 sq.ft. of Revenue Survey No.55 situated at village Bhavanpur, District: Sabarkantha at the rate of Rs.21/- per sq.foot together with solatium and interest at the rate of 18% from the date of its acquisition. In the alternative, the petitioner has prayed to direct the respondents to hand over the vacant and peaceful possession of the land mentioned above together with amount of rent and interest thereon for the use of the land by them.

2. Originally, Revenue Survey No.55 situated at village Bhavanpur,

District: Sabarkantha, belonged to the petitioner. The land remained uncultivated continuously for a period of three years prior to August 1, 1954. Therefore, in terms of Section 8 of the Jagir Abolition Act, the land vested in the Government. After vesting of the land in the Government, necessary Entry No.98 dated February 9, 1956, was made in 7/12 Extract maintained by the Village Panchayat of Bhavanpur, Taluka: Bhiloda. From the affidavit-in-reply filed by Dr.Nishar D.Jankhwala, Incharge Deputy Director, Animal Husbandry, District Panchayat, Sabarkantha, Himmatnagar, on January 11, 2007, it transpires that the original owner of the land had initiated proceedings before the Mamlatdar and had claimed ownership of the land in question. The Mamlatdar, by his order dated December 21, 1956, directed to delete the name of the

government from 7/12 Extract and also directed to enter the name of the original owner in respect of Survey No.55. Feeling aggrieved by the order of the Mamlatdar, an Appeal was preferred before the Collector who allowed the same and set aside the order of the Mamlatdar. The order of the Collector was challenged by the owner of the land before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal partly allowed the revision application filed by the owner vide order dated June 22, 1982, and directed to hold fresh inquiry. After remand, the Collector passed an order dated July 8, 1986, by which it was held that the land belonged to the petitioner. Before the said order was passed, the land was handed over by the Government to Veterinary Hospital of Shamlaji which constructed a hospital in the year 1982. As the hospital was already

constructed, the Joint Director of Animal Husbandry, Ahmedabad, addressed a letter dated May 12, 1988, to explore the possibility of acquiring the land in question because the issue regarding the ownership of the land was decided subsequently. Accordingly, the Executive Engineer (District Panchayat), R & B Department, Himmatnagar, District: Sabarkantha, through the Collector, proposed to the State Government on September 6, 1990, to acquire the land in question. After scrutiny of the proposal, the Government issued notification under Section 4 of the Land Acquisition Act, 1894 (“the Act” for short) which was published in the official gazette on June 20, 1991. Necessary inquiry as contemplated by Section 5A of the Act was made on the basis of which declaration under Section 6 of the Act was made which was published in the

official gazette on October 10, 1991. Thereafter, the petitioner was served with a notice for determination of compensation payable to him. After hearing under Section 9 of the Act was over, the Executive Engineer, R & B Division No.2 (District Panchayat, Himmatnagar), was informed to deposit a sum of Rs.3,33,000/- so that appropriate award could be made under Section 11 of the Act.

The case of the respondents is that the last publication of declaration made under Section 6 of the Act as contemplated by the provisions of the Act was on August 6, 1992, and therefore, the Special Land Acquisition Officer was obliged to make his award on or before August 5, 1994, as contemplated by Section 11A of the Act. However, no award could be made by the Special Land Acquisition Officer under

Section 11 of the Act on or before August 5, 1994, and therefore in terms of Section 11A of the Act, the acquisition proceedings lapsed.

As the amount of compensation payable to the petitioner was neither determined nor paid to the petitioner, the petitioner invoked jurisdiction of this Court under Article 226 of the Constitution by filing Special Civil Application No.2273 of 1995 and claimed following reliefs:

"(a) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order or direction of this Hon'ble Court and be pleased to hold that the failure of the respondents in determining and paying the compensation to the petitioner for the land bearing Survey No.55 Paiki of village Bhavanpur, Taluka: Prantij is ex-facie illegal, arbitrary, contrary to the provisions of Land Acquisition Act and in contravention of Articles 14 and 300A of the Constitution of India.

(b) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order of direction of this Hon'ble Court and be pleased to direct the respondents to forthwith initiate and

complete the appropriate proceedings under the Land Acquisition Act to determine and pay the compensation to the petitioner in respect of the land bearing Survey No.55 Paiki of village Bhavanpur admeasuring 16 Are – 96 sq.mtrs. Which is acquired for Veterinary Hospital.

(c) Your Lordships be pleased to direct the respondents to forthwith initiate and complete the appropriate proceedings under the Land Acquisition Act in respect of the land in question pending admission, hearing and final disposal of this petition.

(d) Your Lordships be pleased to direct the respondents to forthwith pay the on account compensation to the petitioner pending the final determination of the same under the provisions of the Land Acquisition Act pending admission hearing and final disposal of this petition.

(e) Your Lordships be pleased to grant such other and further reliefs as are deemed fit in the interest of justice by this Hon'ble Court.”

During the course of hearing of the abovenumbered petition, a letter dated November 8, 1995, addressed by the Deputy Veterinary Director, Sabarkantha District Panchayat, Himmatnagar, to Veterinary Director, Gujarat State, Krushi Bhavan, Paldi, Ahmedabad-6, was produced for perusal of the Court,

whereby the Veterinary Director was requested to sanction the grant of Rs.1,17,000/- so that the same could be paid as compensation to the petitioner The said communication was ordered to be taken on record of Special Civil Application No.2273 of 1995. In view of the contents of the said letter, the learned counsel for the petitioner had sought permission to withdraw the petition keeping the rights of the parties open in case of need. Accordingly, the permission to withdraw the petition with liberty as mentioned by the petitioner was granted and the petition was disposed of as rejected by order dated November 13, 1995.

The grievance made by the petitioner is that no action was taken by the respondents either to determine the amount of compensation payable to him nor the amount of compensation is paid

to him inspite of several representations made by him. The petitioner requested the Deputy Secretary, Veterinary Department, Gujarat State, Gandhinagar, to pass order for grant of compensation but the Deputy Secretary, Veterinary Department, Gujarat State, Gandhinagar, informed the petitioner to approach the District Panchayat, Sabarkantha, with reference to his request for payment of compensation to him. The petitioner addressed a letter dated July 11, 2006, to the District Development Officer, Sabarkantha District and requested him to make payment of compensation of Rs.1,17,000/- to him with interest at the rate of 18% p.a. from the date of acquisition and also requested him to return the land with rent if compensation was not to be paid to him. As the demand made in the letter was not responded to, the petitioner has

filed the instant petition and claimed reliefs to which reference is made earlier.

3. On service of notice, Mr.J.B.Baraiya, Special Land Acquisition Officer, Himmatnagar, Sabarkantha, has filed reply-affidavit dated December 22, 2006. In reply, it is mentioned that as the award was not declared within two years from the date of declaration made under Section 6 of the Act, the acquisition proceedings had lapsed on August 5, 1994, and therefore, the Special Land Acquisition Officer, Himmatnagar, District: Sabarkantha, had dropped LAQ Case No.51/1991 on August 10, 1994. It may be mentioned that the letter dated August 10, 1994, is not produced by Mr.J.B.Baraiya, along with the reply-affidavit dated December 22, 2006. Mr.J.B.Baraiya has filed further additional affidavit on January 10,

2007, mentioning interalia that the declaration under Section 6 of the Act was lastly published as required by law on August 6, 1992, and as the award was not made on or before August 5, 1994, nor the amount required to be paid as compensation to the petitioner was deposited with the respondent No.4, the proceedings had automatically lapsed as a result of which the Land Acquisition Case No.51/1991 was dropped by the respondent No.4 on August 10, 1994. In support of this averment, Mr.Baraiya has produced a communication dated April 15, 1995, addressed by the Special Land Acquisition Officer, Sabarkantha at Himmatnagar to the learned Government Pleader, Gujarat High Court, Ahmedabad, as Annexure-A to his reply.

4. Dr.Nishar D.Jankhwala, Incharge Deputy Director, Animal Husbandry, District

Panchayat, Sabarkantha, Himmatnagar, has filed reply affidavit dated January 11, 2007, controverting the averments made in the petition. In the said reply, it is mentioned that when the land in question was given to the Animal Husbandry Department of the District Panchayat,the Government was the owner of the land and not the present petitioner and the land acquisition proceedings were initiated because subsequently, the petitioner was held to be the owner of the land. What is averred in the said reply is that as the State Government had not sanctioned the grant as prayed for by the Panchayat, the District Panchayat, which had no source of income, could not deposit the amount of compensation with the Special Land Acquisition Officer and that the petitioner is not entitled to the reliefs claimed in the petition.

5. The petitioner has filed affidavit-in-rejoinder dated January 12, 2007, mentioning interalia that the District Panchayat was already in possession of the land in question before the land acquisition proceedings were initiated on September 6, 1990. It is mentioned by the petitioner in the rejoinder that though the Deputy Director of Animal Husbandry Department had intimated by letter dated November 8, 1995, to the Director of Animal Husbandry Department, Gujarat State, to make payment of amount of compensation to the petitioner, the amount of compensation was not paid and therefore, the petitioner is entitled to the reliefs claimed in the petition. It is further mentioned in the rejoinder that as the respondents have failed to make payment of compensation, the right conferred on the petitioner under Article 300-A of the Constitution

is committed breach of by the respondents and therefore, appropriate direction should be issued to the respondents.

6. This Court has heard Mr.N.V.Gandhi, learned counsel for the petitioner as well as Mr.Manish J.Patel, learned counsel for the respondents No.1 to 3 and Ms.Tanuja N.Kachchhi, learned Assistant Government Pleader for the respondents No.4 and 5 at length and in great detail. This Court has also considered the documents forming part of the petition.

7. From the record of the case, it is evident that before the proceedings were initiated for acquiring the land in question on September 6, 1990, the District Panchayat was already in possession of the land in question. The record does not indicate that the District Panchayat was in possession of

the land in question pursuant to any private agreement entered into between the petitioner and the Panchayat or that the possession was handed over to the Panchayat pursuant to initiation of proceedings under the provisions of the Act. Section 11A of the Act reads as under:

"11A. Period within which an award shall be made:-

(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, (68 of 1984) the award shall be made within a period of two years from such commencement.

Explanation.--In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

A bare reading of the above-quoted provision makes it evident that the Collector has to make an award under

Section 11 of the Act within a period of two years form the date of publication of the declaration made under Section 6 of the Act and if no award is made within that period, the entire proceedings for the acquisition of the land stand lapsed. The admitted facts of the case indicate that the last date of publication of declaration made under Section 6 of the Act was August 6, 1992. Therefore, it was incumbent upon the Collector to make award under Section 11 of the Act on or before August 5, 1994. It is an admitted position that no award at all was made by the Collector under Section 11 of the Act on or before August 5, 1994. Therefore, the acquisition proceedings stood lapsed in terms of Section 11A of the Act. The act does not contemplate revival of lapsed acquisition proceedings. As noticed earlier, the facts of the case indicate

that the respondent No.4 was not to put into possession of the land pursuant to land acquisition proceedings nor an award is made under Section 11 of the Act. Therefore, this Court is of the opinion that the reliefs claimed in the instant petition cannot be granted by the Court. If the award had been made under Section 11 of the Act and thereafter, the possession had been handed over to the respondent No.4 by the Government, the matter could have been examined from a different angle. But here,in this case, neither the award was made within the time stipulated by Section 11A of the Act nor the respondent No.4 was put into possession of the land in question pursuant to initiation of the land acquisition proceedings On the facts and in the circumstances of the case, this Court is of the opinion that the remedy of the petitioner is to seek

possession and claim damages etc. from the respondent No.4 in ordinary Civil Court. The petition therefore is liable to be dismissed.

8. For the foregoing reasons, the petition fails and is dismissed. Notice is discharged There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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